

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Ronald Schoors,

Plaintiff,

v.

Paul Whitaker; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Ronald Schoors complains of Defendants Paul Whitaker; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff has a Disabled Person Parking Placard issued to him by the State of California.

2. Plaintiff suffers from congestive heart failure, cardiomyopathy, recurring transient ischemic attacks and has left-side weakness from two strokes, one of which left him with brain damage. Plaintiff suffers from ongoing and episodic seizures. Plaintiff has a pacemaker in his chest, which helps control abnormal heart rhythms.

1 3. As a result of the physical impairments identified above, plaintiff is
2 significantly limited in his ability to ambulate. He is subject to black-outs and
3 falls, is unsteady on his feet, and uses a cane for mobility. He cannot walk for
4 any significant distances without having to periodically stop, get his heart rate
5 down, and rest. Finally, plaintiff is unable to lift anything over 20 pounds.

6 4. Defendant Paul Whitaker owned the property located at or about
7 54225 N. Circle Drive, Idyllwild, California, in January 2017.

8 5. Defendant Paul Whitaker owned the property located at or about
9 54225 N. Circle Drive, Idyllwild, California, in February 2017.

10 6. Defendant Paul Whitaker owns the property ("Shopping Center")
11 located at or about 54225 N. Circle Drive, Idyllwild, California, currently.

12 7. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for
18 the events herein alleged, or is a necessary party for obtaining appropriate
19 relief. Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 8. This Court has subject matter jurisdiction over this action pursuant to
25 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
26 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 9. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates rights under the Americans with
3 Disabilities Act.

4 10. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
5 founded on the fact that the real property which is the subject of this action is
6 located in this district and that Plaintiff's cause of action arose in this district.

7
8 **FACTUAL ALLEGATIONS:**

9 11. The Plaintiff went to the Shopping Center in January 2017 and
10 February 2017 to shop. Plaintiff visits Idyllwild on a monthly basis and he
11 will continue to do so in the future.

12 12. The Shopping Center is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 13. Parking spaces are one of the facilities, privileges and advantages
15 reserved by defendants to persons at the Shopping Center.

16 14. Unfortunately, although parking spaces were one of the facilities
17 specifically reserved for patrons, there were no compliant accessible
18 handicap parking spaces available for persons with disabilities that complied
19 with the Americans with Disability Act Accessibility Guidelines (ADAAG)
20 during plaintiff's visits.

21 15. Instead, defendants have reserved two parking spaces for persons with
22 disabilities but these parking spaces lack access aisles. Indeed, there are no
23 access aisles whatsoever.

24 16. Additionally, there is an insufficient number of parking spaces
25 reserved for persons with disabilities in the parking lot. There are
26 approximately 55 parking spaces but only 2 spaces are reserved for persons
27 with disabilities (and, as mentioned previously, those parking spaces are not
28 accessible).

1 17. On information and belief, plaintiff alleges that there used to be at
2 least three accessible parking spaces in the parking lot serving the Shopping
3 Center prior to plaintiff's visits.

4 18. Plaintiff alleges, on information and belief, defendants allowed the
5 parking spaces that were previously reserved for persons with disabilities to
6 fade away into oblivion or get paved over.

7 19. Currently, there are no compliant, accessible parking spaces designed
8 and reserved for persons with disabilities in the parking lot serving the
9 Shopping Center.

10 20. The defendants had no policy or plan in place to make sure that the
11 accessible parking spaces reserved for persons with disabilities remained
12 useable prior to plaintiff's visits.

13 21. The defendants have no policy or plan in place to make sure that the
14 accessible parking spaces reserved for persons with disabilities remain
15 useable currently.

16 22. Restrooms are one of the facilities, privileges and advantages reserved
17 by defendants to persons at the Shopping Center.

18 23. Unfortunately, the restroom, which was designated for customer use,
19 was not accessible on the day of plaintiff's visits.

20 24. The restroom provides a toilet stall. However, instead of providing two
21 grab bars on adjacent or parallel walls for use by persons with disabilities who
22 need to transfer to the toilet, there were no grab bars.

23 25. Additionally, the height of the toilet, when measured to the top of the
24 toilet seat is 15.5 inches. This is not accessible to plaintiff.

25 26. Plaintiff personally encountered these barriers.

26 27. This inaccessible condition denied the plaintiff full and equal access
27 and caused him difficulty and frustration.

28 28. Plaintiff visits this area on a regular and ongoing basis. Plaintiff would

1 like to patronize the Shopping Center when he visits Idyllwild.

2 29. The defendants have failed to maintain in working and useable
3 conditions those features required to provide ready access to persons with
4 disabilities.

5 30. The violations identified above are easily removed without much
6 difficulty or expense. They are the types of barriers identified by the
7 Department of Justice as presumably readily achievable to remove and, in
8 fact, these barriers are readily achievable to remove. Moreover, there are
9 numerous alternative accommodations that could be made to provide a
10 greater level of access if complete removal were not achievable.

11 31. For example, there are numerous paint/stripe companies that will
12 come and stripe a parking stall and access aisle and install proper signage on
13 rapid notice, with very modest expense, sometimes as low as \$300 in fully
14 compliance with federal and state access standards.

15 32. Meanwhile, installing grab bars in the restroom is an inexpensive task
16 that is accomplished with very little cost (no more than \$400).

17 33. Finally, installing a compliant toilet seat – that is just 1.5 inches higher
18 – can be done with relatively little cost. The cost to get an accessible toilet seat
19 is around \$100.

20 34. Plaintiff is and has been deterred from returning and patronizing the
21 Shopping Center because of his knowledge of the illegal barriers that exist.
22 Plaintiff will, nonetheless, return to assess ongoing compliance with the ADA
23 and will return to patronize the Shopping Center as a customer once the
24 barriers are removed.

25 35. Given the obvious and blatant violation, the plaintiff alleges, on
26 information and belief, that there are other violations and barriers on the site
27 that relate to his disability. Plaintiff will amend the complaint, to provide
28 proper notice regarding the scope of this lawsuit, once he conducts a site

1 inspection. However, please be on notice that the plaintiff seeks to have all
 2 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
 3 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
 4 he can sue to have all barriers that relate to his disability removed regardless
 5 of whether he personally encountered them).

6 36. Additionally, on information and belief, the plaintiff alleges that the
 7 failure to remove these barriers was intentional because: (1) these particular
 8 barriers are intuitive and obvious; (2) the defendants exercised control and
 9 dominion over the conditions at this location and, therefore, the lack of
 10 accessible facilities was not an “accident” because had the defendants
 11 intended any other configuration, they had the means and ability to make the
 12 change.

13
 14 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 15 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 16 defendants (42 U.S.C. section 12101, et seq.)

17 37. Plaintiff repleads and incorporates by reference, as if fully set forth
 18 again herein, the allegations contained in all prior paragraphs of this
 19 complaint.

20 38. Under the ADA, it is an act of discrimination to fail to ensure that the
 21 privileges, advantages, accommodations, facilities, goods and services of any
 22 place of public accommodation is offered on a full and equal basis by anyone
 23 who owns, leases, or operates a place of public accommodation. See 42
 24 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 25 a. A failure to make reasonable modifications in policies, practices,
- 26 or procedures, when such modifications are necessary to afford
- 27 goods, services, facilities, privileges, advantages, or
- 28 accommodations to individuals with disabilities, unless the

1 accommodation would work a fundamental alteration of those
2 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to remove architectural barriers where such removal is
4 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
5 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
6 Appendix “D.” and

7 c. A failure to “maintain in operable working condition those
8 features . . . required to be readily accessible and useable by
9 persons with disabilities . . .” 28 C.F.R. § 36.211(a);

10 39. Any business that provides parking spaces must provide accessible
11 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
12 every eight of those accessible parking spaces but not less than one must be a
13 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
14 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
15 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

16 40. Here, the lack of an accessible parking space is a violation of the law.

17 41. Any business that provides parking spaces must provide a sufficient
18 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
19 Standards § 208. According to the 1991 Standards, if a parking lot has 55
20 spaces, it must have 3 accessible parking spaces. 1991 Standards §
21 4.1.2(5)(a). Under the 2010 Standards, a parking lot with 55 spaces must
22 have 3 accessible spaces. 2010 Standards § 208.2 and 1 of them must be van
23 accessible. *Id.* at 208.2.4.

24 42. Here, there were just two spaces reserved for persons with disabilities
25 and those spaces were not compliant with the law.

26 43. Here, the failure to provide accessible paths of travel in and
27 throughout the merchandise aisles is a violation of the law.

28 44. The height of water closets (toilets) must be from 17 inches to 19

1 inches, measured to the top of the toilet seat.

2 45. Here the toilet is too low and does not comply with the ADA.

3 46. Toilet stalls can conform to the “standard” stall arrangement or an
4 alternate stall arrangement but in either case, there needs to be two grab bars
5 mounted on adjacent or parallel walls next to the toilet for use by persons
6 with disabilities. 1991 Standards § 4.17.6.

7 47. Here the failure to provide such grab bars is a violation of the law.

8 48. A public accommodation must maintain in operable working condition
9 those features of its facilities and equipment that are required to be readily
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11 49. Here, the failure to ensure that the accessible facilities were available
12 and ready to be used by the plaintiff is a violation of the law.

13 50. Given its location and options, plaintiff will continue to desire to
14 patronize this Shopping Center but he has been and will continue to be
15 discriminated against due to the lack of accessible facilities and, therefore,
16 seeks injunctive relief to remove the barriers.

17
18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
19 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
20 51-53)

21 51. Plaintiff repleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint.

24 52. Because the defendants violated the plaintiffs’ rights under the ADA,
25 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
26 Code § 51(f), 52(a).)

27 53. Because the violation of the Unruh Civil Rights Act resulted in
28 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are

1 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
2 55.56(a)-(c).)

3
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this court award damages and provide
6 relief as follows:

7 1. For injunctive relief, compelling defendants to comply with the
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
9 Plaintiff is not invoking section 55 of the California Civil Code and is not
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. Damages under the Unruh Civil Rights Act which damages provide for
12 actual damages and a statutory minimum of \$4,000 for each
13 incident/offense.

14 3. Reasonable attorney fees, litigation expenses and costs of suit,
15 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52 and Code of Civil
16 Procedure § 1021.5.

17 Dated: March 1, 2017 CENTER FOR DISABILITY ACCESS

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19 
20 By: _____
21 Russell Handy, Esq.
22 Attorneys for plaintiff
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